In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-469

CLEMENT A. TAVARES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner filed this suit for a tax refund in the United States District Court for the Eastern District of California, alleging that the collection of the taxes pursuant to a levy denied him due process. The district court granted the government's motion for summary judgment and the court of appeals affirmed (Pet. App.). The judgment of the court of appeals was entered on January 30, 1974, and petitioner failed to obtain an extension of time for filing his petition for a writ of certiorari.[1] The petition was not

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[1]We have been advised by the Clerk of this Court that, prior to April 30, 1974, petitioner sent to the Court a document captioned "Petition for Writ of Certiorari" that was returned to him by the Clerk on the grounds (i) that it did not conform with the printing specifications of Rule 39 of the Rules of this Court and (ii) that it did not set forth facts showing that petitioner was entitled to proceed *in forma pauperis* under 28 U.S.C. 1915 and Rule 53 of the Rules of this Court.

filed until October 22, 1974, and is therefore out of time under 28 U.S.C. 2101(c). Accordingly, this Court is without jurisdiction to grant the petition.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1975.